# Histories of Law and Religion

McIvor, Meadhbh

*Published in:*
Religious Studies Review

*DOI:*
10.1111/rsr.14363

# Serialization: Law and Religion

## Histories of Law and Religion

**THE LAW OF ORGANIZED RELIGIONS: BETWEEN ESTABLISHMENT AND SECULARISM**

By Julian Rivers
Oxford, UK: Oxford University Press, 2010
Pp. 400. Hardcover, $120.00.

**CHRISTIAN SLAVERY: CONVERSION AND RACE IN THE PROTESTANT ATLANTIC WORLD**

By Katharine Gerbner
Philadelphia, PN: University of Pennsylvania Press, 2018
Pp. 296. Paper, $24.95.

**LAW AND IDENTITY IN COLONIAL SOUTH ASIA: PARSI LEGAL CULTURE, 1772–1947**

By Mitra Sharafi
Cambridge, UK: Cambridge University Press, 2014
Pp. 368. Paper, $36.99.

*REVIEWER:* *Méadhbh McIvor*
*University of Groningen*
*Groningen, The Netherlands*

In November 2018, President of Ireland Michael D. Higgins signed into law the thirty-seventh amendment to the Irish Constitution, removing the word "blasphemous" from Article 40.6.1.i (which prohibited "the publication or utterance of blasphemous, seditious, or indecent matter"). A crime since the document's 1937 ratification, the blasphemy provision was scrapped after a public vote in which nearly sixty-five percent of participants agreed to its removal.

Ireland's Constitution can only be changed by referendum. The blasphemy vote was one of several such referenda held in recent years. It followed the May 2018 decision to repeal the eighth amendment (which, by giving equal legal status to both the fetus and the woman carrying it, criminalized abortion) and 2015's equal marriage referendum, in which Ireland became the first country to legalize same-sex marriage by popular vote. Given that the official Catholic hierarchy campaigned heavily against both proposals, these votes were read as evidence that the Church was no longer the primary guiding force for the Irish people.

For many outsiders, this spate of referenda—and the changing place of the Catholic Church that they were taken to signify—was met with glee: proof that the arc of history bends toward social liberalism. If conservative, religious Ireland could vote to legalize same-sex marriage, the *New Yorker* breathlessly suggested, so too could Mississippi (Sorkin 2015)!

While some celebrated, however, others wondered how bans on abortion and blasphemy could have survived so late into the twenty-first century. "The population has moved on, [people are] no longer controlled by the Catholic Church, but a lot of the laws that were put in place are still there," argued Michael Nugent, the head of Atheist Ireland and a veteran campaigner against the blasphemy law. "We have to chip away at them and get the state to catch up with the people" (Graham-Harrison 2018).

But what would this "catching up" look like? Narratives of legal and cultural progress in which conservative religious shackles are slowly shed may make for good copy, but they rarely reflect the complicated reality governing the interaction of law, politics, and religion in contemporary nation-states. Indeed, studying the historic interaction of religion and law in named polities—that is, the law's regulation of religion, religion's influence on legal norms, and the semisubmerged theological underpinnings of many contemporary legal categories—is more likely to lead to recognition of the contingency of these relationships than to an acceptance of the "tidy stories" in which one is slowly filtered out from the other (Johnson, Klassen and Sullivan 2018, 5).

This review offers three case studies as an introduction to historical accounts of law and religion. Focusing on the law's regulation of religion and religion's salience to law in post-Reformation England, the seventeenth-century Caribbean, and British-controlled India, these historical investigations of the law-religion nexus shed light on the broader contexts in which states, constitutions, communities, and "religions" are formed and governed.

In particular, they emphasize the ways in which legislation concerning "religion" has involved the production and regulation of difference in multicultural, multiethnic, and multireligious states. This is demonstrated by, *inter alia*, the changing place of the established church in England,

*Religious Studies Review*, Vol. 46, No. 1, March 2020

where the distinction between Catholic and Protestant has been somewhat superseded by the distinction between religion and the secular; the role of Christian missionaries in the racialization of slavery in the Americas, where legally enshrined Protestant supremacy developed into white supremacy; and the strategic mobilization of the law in India, where the embrace of litigation cemented a distinctive ethnoreligious identity among Zoroastrian Parsis. As all three regions struggle with political polarization and the normalization of ethnonationalism, these works shed light on the historical developments underlying such divisions, offering much needed context for scholars working in and on these countries today.

## From Sectarianism to Pluralism

If "law and religion" is a growing subfield of legal and/or religious studies, it is one that raises definitional issues familiar to scholars of both. So notes Julian Rivers' *The Law of Organized Religions*, which begins: "This is a systematic study of English law as it applies to organized religions. None of these terms is particularly satisfactory" (vii). Given this difficulty, Rivers' ability to synthesize centuries of legislation and legal cases into a coherent narrative is impressive. Beginning with the Roman conquest of Britain circa 43 CE, he provides an overview of the legal regulation of religion(s) to the present day, albeit with a focus on developments from the nineteenth century onward. It is an undeniably ambitious project, not least because, as he puts it, there is no clear "constitutional principle" that could be said to govern organized religion in English law (345).

The narrative he tells is one of rising religious diversity (and tolerance of that diversity) alongside the emergence of a commonly held belief that church and state ought to be kept separate. By the mid-nineteenth century, English law had begun to move from the assumption that all religions were unlawful unless they were specifically recognized and provided for to the assumption that all religions were lawful so long as they were not outlawed. In this way, the "changing law of Church and State [is characterized by] a slow transition from the maintenance of one true religion to the principle that there is, in law, no false religion" (24). (Another way of putting it, as Rivers intimates, is that all religions are now recogniszd as being *equally* false, legally speaking.) Given the coterminous fact of religious establishment and separationist assumptions, the Church of England (CoE) has come to function as a kind of paradigm for church-state engagement, normalizing the presence of religion in public life for both established and nonestablished traditions. "This dynamic tension," Rivers suggests, "has been the substitute for any statement of constitutional principle" (345).

This is a story in which religious establishment and religious pluralism, although initially opposed, increasingly rely on one another to justify their place in the public sphere. Establishment continues, but it is no longer the explicitly discriminatory, punitive regime of prior decades. Indeed, representatives of the established church increasingly seek to speak on behalf of those framed, in the parlance of our times, as people of faith (as opposed to people of a *particular* faith, religion, or tradition)—a sharing of privilege only thinkable in a context where the critical difference is no longer that between Anglicans and Catholics, but between people "of faith" and those who do not so identify. ("Religion," as former Archbishop of Canterbury Rowan Williams once put it, is increasingly seen to be the preserve of "oddities, foreigners and minorities" by members of the political class [Batty 2009]; and such oddities must stick together.)

While this move toward religious pluralism has made it easier for members of nonestablished traditions to organize their worlds according to religious precepts and practices, it has also been accompanied by a "thoroughgoing process of secularization" that Rivers worries will impact this relatively newfound ability (25). In particular, he argues that the state's tendency to view religious liberty as a matter of individual conscience (as opposed to actions, practices, and community norms and standards) is a troublingly narrow understanding of what religious freedom means (30–36). This strand of analysis runs throughout the book, which is critical of legal efforts to enforce normative, romanticized visions of what religion "is" or should be (for example, through requiring religious organizations to be "publicly beneficial" for the purposes of charity law, or by insisting that these organizations comply with equalities legislation in the same way other associations are expected to).

Following an initial overview of the history of English law and religion, the book then adopts a thematic approach, discussing legislation and case law relating to, among others, ministers of religion; chaplaincies; faith-based welfare; and religious schools. Rivers does an admirable job of highlighting the ambivalence that seems to undergird much of the relationship between religious organizations and the law. For example, Chapter Three focuses on what he terms "the centre of the law of organized religions," that is, "the legal constitution of religious bodies" (72). Historically, this relationship has been defined by ignorance or hostility, at least for nonestablished traditions. Roman Catholic and Jewish organizations, for example, could be easily disrupted by a legal system that did not recognize their institutional structures or social forms.

More recently, however, the situation has been marked by a different kind of tension, one in which judicial oversight is simultaneously requested and resented. Religious

organizations may seek the protection of the law, but they are also wary of submitting themselves to secular power. Similarly, the courts are keen to protect religious citizens even as they are wary of venturing into disputes that might be deemed "theological." As a result, today's English judges are (in theory) less willing to rule on issues relating to doctrine than their nineteenth-century forbears, either declaring these nonjusticiable in sum or attempting to "filter out" the "religious dimensions" of a dispute. Problems arise, Rivers suggests, not merely as a result of the tension between regulation and rejection, but because there are occasional "[mismatches] of expectation and approach as to its proper resolution" (73). If a religious organization seeks a ruling on an interest that the court sees as moral or theological (as opposed to properly "legal"), there may be disappointment when the courts declare the issue nonjusticiable (90). (How these judges distinguish between "merely" theological and properly legal interests is, of course, a matter of heated debate.)

A similar tension is evident in the state's regulation of religious schools (known as "faith schools"), which represents one of the most "contested" fields of church-state law. Since the 1997 election of Tony Blair's New Labour government, schools "with a faith-based ethos no longer represent a tolerated historic residue but have been welcomed as part of a new multicultural agenda" (and, of course, a neoliberal tendency to delegate public services to civil society) (234). In addition to institutions affiliated with the CoE and other Protestant denominations, the state also funds Catholic, Hindu, Jewish, Muslim, and Sikh schools (although the vast majority of faith schools are Anglican).

While this openness has been welcomed by many religious groups, Rivers notes that it has not come without cost. Greater state collaboration often translates to greater state control. The desire of religious bodies to set admissions and employment policies that run counter to equalities legislation reveals "the extent to which the current law of education is locked into a post-Christian paradigm, in which 'religion' only affects specifically religious instruction and collective worship" (259). As such, faith schools are a particularly clear example of Rivers' overarching thesis: they index efforts to recognize religious pluralism by drawing on a model shaped by Christianity, while also reflecting secular norms and assumptions that serve as a limit to these schools' autonomy.

Rivers' account is not only descriptive. It is also rooted in a normative wariness of what he deems the excesses of secularism. He is critical of (some) efforts to separate church and state and worries about state incursion into religious worlds, suggesting that although courts are increasingly willing to recognize that religious issues are "at stake," they remain "quite unwilling to allow [them] to outweigh considerations of the monistically-conceived public interest" (333). Indeed, he suggests that equality and diversity provisions have the potential to become "worryingly oppressive" in the future (346).

Whether one accepts this normative angle will influence one's response to the work. Some readers may take issue with the idea that state efforts to prevent discrimination by religious bodies on the grounds of gender or sexuality (for example, as regards the employment of women) are best understood as "ideological bullying" (334); after all, at least some of the impetus for challenging such norms comes from the women within these communities themselves. (One could just as easily argue that these women's religious rights are violated by their churches as that their churches' religious rights are violated by the state.) Of course, there is a principled argument to be made that protections for, *inter alia*, women and sexual minorities should be waived in defense of religious liberty, and Rivers advocates broad exemptions for religious groups on these grounds. Yet he fails to fully engage with the fact that ensuring religious liberty for some may well come at the expense of others. Further, and given that his argument is undergirded by the fact that religious diversification is taking place at the same time as the growth of secular and non-theistic assumptions, greater elaboration on why *religious* organizations (but not others) ought to be granted these wide exemptions would be helpful for readers not predisposed to accept religious liberty as an unqualified good.

In the decade since *The Law of Organized Religions* was first published, controversies involving religion and equality provisions have continued to make headlines. There is some evidence that UK judges have taken on board Rivers' critique of state "ideologizing" (see, for example, *Lee (Responding) v Ashers' Baking Company*, which held that Christian bakers could not be compelled to ice a cake with the words "Support Gay Marriage").

Yet the case law remains haphazard, affirming Rivers' view that there is no definite "constitutional principle" governing this field (345). In legal scholar Russell Sandberg's—somewhat more direct—terminology, the situation is simply "hideously confused" (2018, 152). For lawyers like Sandberg, this lack of principle is problematic. A coherent body of law would help religious groups, local authorities, and individual citizens to know where they stand, what is expected of them, and from which laws they can reasonably diverge. For these reasons, Sandberg encourages the development of a "universal definition" of religion in English law.

For our purposes, however, the English case is instructive precisely *because* it lacks a well-developed guiding principle. That the law appears unprincipled is indicative of the fact that it has developed piecemeal in response to political conflict both nationally and internationally; to the rise of tolerance and ecumenism as goals to be pursued; and to the changes in religious demographics prompted by the collapse of empire. As Rivers

himself puts it, "The relationship between law and religion in any country is a reflection of historical contingencies, controversies, and compromises" (1).

England is currently readying itself for the seismic legal changes likely to result from its withdrawal from the European project. In a post-Brexit, increasingly disunited United Kingdom, the regulation of religious diversity remains a pressing issue, and the "law of organized religions" will be an area of legislation and litigation well worth monitoring.

## From Protestant Supremacy to Christian Slavery

Historical contingencies cast long shadows. Nowhere is this more apparent than in the co-construction of race and religion in what historian Katharine Gerbner, in her recent book *Christian Slavery*, calls "the Protestant Atlantic world." Drawing on data from Barbados, the Danish West Indies, and North American slave colonies from the 1600s through to the late 1700s, Gerbner shows how Protestant missionaries were instrumental in the legal codification of white supremacy and race-based slavery in the Americas.

More specifically, she charts the move from Protestant supremacy (in which professing Protestant Christianity was firmly associated with physical liberty and political rights), to "Christian slavery" (in which Protestantism, although it offered spiritual freedom, was deemed compatible with physical enslavement), to white supremacy (by which time race, rather than religion, had become the ultimate marker of freeperson status). In so doing, she contributes to scholarly genealogies of the categories "black" and "white" and corrects a somewhat romanticized vision of Protestant missionaries as the inevitable forebears of abolitionism. By contrast, she shows how these missionaries "fought hard to accommodate slavery to their Christian principles," leading to legislation "affirming that Protestant status was compatible with perpetual bondage." If their writings can be understood as the antecedents of the antislavery movement, she argues, they should *also* be understood "within the long history of proslavery thought" (4); for regardless of these missionaries' ostensible desire to improve the lot of enslaved Africans, contemporary white supremacy has its roots in their efforts to "Christianize" this most barbaric of institutions.

This is an important thesis. As Gerbner notes, much historical work on Protestantism in the colonies focuses on its relationship to the antislavery movement. Even denominations not known for their commitment to abolitionism, such as the Anglican and Moravian churches, have had scholars "read a humanitarian impulse into their early missionary ventures." As such, she prompts a rethinking of those often associated with laying the groundwork for eighteenth-century abolitionism, including Quakers: "Far from anticipating the antislavery position, these Protestant missionaries articulated and circulated a vision for Christian slavery that laid the groundwork for the proslavery apologists of the eighteenth and nineteenth centuries" (4).

Gerbner focuses on planters' shifting responses to the evangelization of enslaved peoples from the mid seventeenth to the late eighteenth centuries. In the mid-1600s, most settlers were convinced that conversion necessitated manumission. As such, they were opposed to the religious instruction of those they had enslaved and greeted missionaries with hostility. By the final decades of the eighteenth century, however, the emergence of the doctrine of Christian slavery had led many such planters to accept the presence of missionaries, some of whom touted baptism as a means of making enslaved persons "more docile and obedient than their non-Christian counterparts" (133).

Gerbner uses a combination of personal narratives, baptismal records, missionary literature, and legislation to make the case that Anglican, Moravian, and Quaker missionaries played a key role in this transition, thus laying the groundwork for a fully racialized approach to slavery. Chapter Six, for example, which explores the Society for the Propagation of the Gospel in Foreign Parts' (SPG) efforts to convert enslaved Africans, focuses on the work of two named individuals: Elias Neau and Francis Le Jau. These men, French Protestants living in New York and South Carolina, responded to the dominant ideology of Protestant supremacy by stressing the compatibility of Protestantism with slavery. Neau sought "to reform laws to ensure the legality of owning Christian slaves" (117); Le Jau required all enslaved adults to make a declaration stating that they did not seek baptism "out of any design to free [themselves] from the duty and Obedience [owed to their enslavers]" (125).

Chapter Four, "From Christian to White," charts the gradual replacement in colonial legislation of the word "Christian" with the word "white" as a marker of free status. While "scholars have long recognized that whiteness emerged from the protoethnic term 'Christian,'" Gerbner pushes this argument forward by focusing on the intimate relationship between the category of "white" and the conversion of enslaved peoples (74). In Barbados, for example, this category gained salience in response to the "small but growing" population of free black Christians. By the late seventeenth century, some members of this community were technically eligible for freeholder status, which, according to English law, required freeholders to be "adult, Christian, propertied, and male" (84). Given that free black men could attain all these markers, Anglo-Caribbean whites began to rethink the relationship between Protestantism and political rights.

The result, Gerbner argues, was the legal codification of a racial requirement for freeholder status, thus excluding this

growing community from the right to vote or run for office. For example, between 1660 and 1690, the term "white" was rarely used in Barbadian legislation. Indeed, it appears just three times in thirty years. Yet its use increased dramatically between 1690 and 1700 (during which time the free black community was growing), peaking in the first decade of the eighteenth century. The use of the term "Christian," by contrast, shows an inverse trend.

As such, "by the eighteenth century, whiteness had replaced Christianity as the primary indicator of nonslave status" (84). Legislation such as the *Act for the speedy supply of Arms, Ammunition, Stores and white Servants* (1696) and the *Act to keep inviolate and preserve the Freedom of Elections* (1709) legally condemned both free and enslaved persons of African heritage to the status of a racial underclass, "regardless of their religious affiliation or cultural practice" (86).

While these Acts relate to Barbados, similar changes took place throughout the Atlantic world. This included the colonies in New York, Maryland, and Virginia, the last of which sought to encourage planters to allow the evangelization of enslaved persons by issuing a legislative opinion stating that "the Conferring of Baptisme doth not allow the Condition of the slave as to his bondage or freedom" (88). While baptism had previously been a tool in the legal arsenal of those seeking manumission—for example, as in the case of Elizabeth Key, who sued successfully for freedom in 1654 in part on the basis of her baptism and knowledge of Christianity—the last decades of the seventeenth century saw the gradual uncoupling of freedom from Protestantism.

Gerbner emphasizes the interdenominational context in which the conversion of enslaved peoples took place. Much historical writing on Christianity and slavery in Latin America and the Caribbean focuses on (Catholic) Spanish, Portuguese, and French colonies, where enslaved persons were frequently baptized into the Catholic Church (sometimes against their will). Yet some colonies featured "confessional borderlands" in which Protestant and Catholic missionaries and planters could observe one another's efforts at converting enslaved men and women. In this way, "Protestant ideas about slavery often emerged in relation to Catholic practice" (5). Similarly, among the Protestant churches, "interdenominational rivalry" played a role in the different denominations' decisions to advocate for the conversion of enslaved persons. The Anglican Church, for example, embraced slave evangelism in response to criticism from the Quakers.

*Christian Slavery* does not shy away from the inevitable complexities and tensions underlying one of the book's core concepts: that of conversion. While some scholars avoid the term for theoretical, historical, and/or moral reasons (in addition to reifying religion by implying that one trades one system for another, it privileges missionary goals rather than the experience of enslaved peoples), Gerbner prefers to recognize this tension, using a range of materials and techniques "to examine how non-Europeans perceived and narrated their engagement in Christian rituals" (7). Enslaved Africans converted for many reasons (only some of which would have pleased their European evangelizers). Some recognized the benefits of Protestant status; some pursued Christianity as a way of accessing literacy and education, including as a means of challenging or undermining slavery itself; some will have been convinced of the power or truth of Christianity. Many conversions will have involved a combination of these, while some baptisms—for example, those of children—may have been carried out against the wishes of parents or guardians.

The case of Peter, a child baptized on Barbados in 1652, is a poignant example of the dearth of options for persons surviving under the immense and horrific violence of slavery. While the baptismal register lists the name of Peter's father—a white man named Jacob Heming—his mother's name is not recorded. It is likely that she was enslaved by Heming. Whether she supported Peter's baptism (perhaps thinking it would offer him social or spiritual protection) or not (perhaps viewing it an unwelcome, foreign ritual), "she certainly had a very narrow set of options placed before her" (78). The same is true of the many other enslaved persons whose forced "intimacy" (sexual or otherwise) with whites led to their baptism. Theirs was an agency exercized in a context of physical, social, and spiritual violence, repression, and constraint.

Gerbner's final conclusions are damning: "the most self-sacrificing, faithful, and zealous missionaries in the Atlantic world formulated and theorized a powerful and lasting religious ideology for a brutal system of plantation labour" (196). This "powerful and lasting" ideology continues to poison the former colonies on which *Christian Slavery* focuses. Given the persistent, endemic violence meted out and justified by reference to "whiteness," Gerbner's book is depressingly timely. It is an important resource for scholars and teachers looking to explain and challenge legalized racism in our own time.

## From Religious Community to Ethnic Identity

While some colonized populations have racial or religious classifications forced upon them, others use the law to cement such identities themselves. Such was the case with India's Zoroastrian Parsi minority in the lead up to independence, whose embrace and appropriation of colonial-era law is the subject of Mitra Sharafi's masterful *Law and Identity in Colonial South Asia*.

Focusing on Parsi use of the legal system from 1776 to 1947, Sharafi examines both the (Parsi-led) creation of a system of personal law and Parsis' interaction with the legal system as legal actors. Through frequent recourse to colonial law, "Parsi lobbyists, legislators, lawyers, judges, jurists,

and litigants de-Anglicized the law that controlled them *by sinking deep into the colonial legal system itself.*" Rather than assimilating to English norms or losing their identity to the colonizers, Sharafi argues, "their mastery of the form of Anglo legalism enabled them to evacuate its contents" (5). Thus, while "many colonized and minority populations attempted to protect themselves by avoiding interaction with the state, the Parsis did the opposite," enabling the creation of "pockets of autonomy" at the heart of the British Empire's legal and political institutions (8–9, 5).

Sharafi opens by noting the ways in which Zoroastrian Parsis differed from other communities in British-controlled India circa 1850. While Hindus and Muslims were governed under Anglicized interpretations of "religious" law (the so-called personal law system), Parsis were taken to lack "a real legal tradition" (1). As such, they were ruled according to the laws of England. By the time of India's independence almost a century later, however, the situation was radically different. Not only had Parsis used the courts to develop a body of Parsi personal law, but they had also "become some of the British Empire's greatest lawyers and judges" (3). They were experts in English law and custom, both working in colonial courts and using them to settle disputes with their fellow Parsis.

Sharafi's interest in Parsi legal activism was prompted by what seemed like a numerical discrepancy. In the early twentieth century, she notes, the Parsi community was made up of about 100,000 persons dispersed throughout India. Even in Bombay, where the community was the most concentrated, Parsis were only six percent of the population. Yet they made up almost twenty percent of parties involved litigation. "Why," she asks, "did Parsis sue each other so frequently in the colonial courts?" (6).

The "each other" element here is critical. In addition to being willing to take those from outside the community to court, Parsis were also willing to legalize *intra*-community disagreements. Given that colonization might well have resulted in a firmer commitment to resolving issues within the community out of a desire to avoid interaction with or regulation by the colonial state, Parsi litigiousness seems to require explanation.

Rather than focusing on theology or doctrine as an explanatory measure, Sharafi focuses on the institutional factors that encouraged Parsis to take to law. Among these, she notes that they did not have well-developed dispute resolution procedures at the community level. A decentralized priesthood meant there was no clear hierarchy in place, and the priestly role was one of ritual obligations rather than the provision of advice or mediation. (We will return to the importance of—and the difficulty of maintaining—ritual purity below.) Further, Zoroastrianism lacked a legal tradition comparable to Judaism or Islam, "in which law was an elaborate and formalized subfield of religious knowledge" (72). Whereas other diasporic communities in polities that recognized personal law could point to longstanding religio-legal principles, Parsi Zoroastrians—whose forebears had come to India from Persia between the tenth and fourteenth centuries CE—had no such body of law to which to point. (Much of their written heritage had been destroyed in successive waves of attack while in Persia, while other aspects of religious knowledge may have been lost as a result of migration.)

Yet Parsi-led initiatives soon changed this. From the 1830s onward, "Parsis organized themselves into lobby groups that drafted and pushed for the passage of legislation pertaining to Parsi marriage and inheritance," thus replacing English legal norms with those that reflected (elite) Parsi values (84). Through this lobbying, Parsis effectively created their own system of personal law, a system largely administered by Parsi lawyers and judges. In marked contrast to the situation facing British India's Hindu and Muslim communities, the male elites of which were disempowered by a personal law system that rested on "juryless courts" rather than "community bodies," elite Parsi men were able to cement their community power and to legislate their understanding of proper Parsi behavior.

Sharafi also shows how such men used the law to entrench certain notions of identity. Of particular interest is her account of "Parsi eugenics," which played a key role in bringing Persianness to the fore as a marker of community membership. While the "study of race and racial discourse in British India has concentrated on European perceptions of racial difference," she uses a series of early twentieth-century court cases to emphasize the importance of studying "racial attitudes *between colonized populations*" (275–6). This is a useful contribution to the literature on race and empire, and the cases Sharafi uses to explore this subject—defamation and libel suits centering on ritual purity and paternity—provide extremely interesting examples of the increasing racialization of community membership.

For reasons both local and global, the early twentieth century saw a renewed focus on the importance of Persian heritage as a marker of true Parsi identity. This is reflected in cases such as *Saklat v Bella* (1925). Bella, the adopted child of a Parsi couple, was initiated into the Zoroastrian religion at the age of fourteen. Although her biological father was likely Parsi, she was presented as having been born to an Indian Christian couple. This caused a group of orthodox Parsis to seek to bar her from the fire temple: "Only members of the community could enter the temple and see the sacred fire. The presence of outsiders inside the temple would defile it" (288). Thus began a decade-long dispute over the question of community membership: was the important issue one's religious initiation and ritual observance, or one's racial and ethnic heritage? Drawing on the thought of Dinshah Davar, the first Parsi judge of the Bombay High Court (and a proponent of a racially exclusive understanding of Parsi identity), the Privy Council in London ultimately held that although Bella could be granted entry to the temple on a discretionary basis, she was not entitled to enter by right. Their decision reflected an increasingly exclusivist notion of identity founded not only on culture and religion, but on race.

Bella's case, as well as a spate of libel suits brought against those who publicly questioned a Parsi's Parsi heritage, shine light on "changing Parsi views" about race and religion during this period (293). For a diasporic community worried that their distinctive identity would fade unless endogamy was enforced, "the global rise of the eugenics movement" enabled the assertion of exclusivist notions of Parsi "racial purity" (296). Perhaps, Sharafi suggests, the focus on racial purity came about as a result of the difficulty of maintaining religious, or ritual, purity: "Parsis could not adhere strictly to the purity laws if they wanted to take advantage of the educational, professional and financial opportunities afforded by imperial subjecthood . . . But if being Parsi was no longer about following the Zoroastrian purity laws, what was it about?" (311). In Sharafi's analysis, race emerges as an obvious candidate. Given the litigiousness that she documents so well, it is no surprise that these intragroup debates so often played out in court (and given the role of the law in circumscribing various aspects of identity, perhaps it is no surprise that J. J. Vimadalal, a proponent and popularizer of Parsi eugenics, was also a prominent lawyer).

Sharafi is convincing in her account of the impact of Parsi legal activism. Her meticulous analysis of litigation, legislation, and individual legal biographies all confirm that "what made Parsi law Parsi was not historically Zoroastrian content as much as it was *the fact that Parsis made it*" (313). She also points out, of course, that "*law also made the Parsis*" (316), for example, in the way Parsi persons adopted legal processes. Yet, this aspect of the relationship takes up much less space in the text, and the reader is sometimes left to wonder whether Parsi lawyers, judges, litigants, and commentators were not more shaped by legal "cunning" than is sometimes implied (Povinelli 2002; Fernando 2014).

Of course, as she notes, the fact that she is working with historical material makes it difficult to determine the impact of these cases on her subjects' inner worlds. From an ethnographic perspective, though, it remains a pertinent question; not least because the religious and racial divisions introduced or cemented by the personal law system feature so prominently in contemporary Indian politics.

## Contemporary Resonances

I start this conclusion with a confession. As careful readers will no doubt have noticed, I am not a historian. I am not trained in the study of the past. If anything, my own discipline has not always sat well with history: anthropologists write in the ethnographic present. Why, then, focus this review on legal historians' contribution to the field of law and religion?

At the risk of cliché, one simple reason is that the ethnographic present always depends on the ethnographic past. Historians are often uncomfortable with other scholars' tendency to leap between eras, to anachronistically apply concepts from one context to another, or to assert simplistic causal relationships between headlines and history. Channeling L. P. Hartley, for example, Sharafi reminds us that "Observations about the present do not necessarily tell us about the past, that proverbial foreign country" (314). To view today's world as the inevitable outcome of the past is to adopt, in Samuel Moyn's words, a "church history" approach that assumes its conclusions from the outset and works backward to confirm them (2010, 6).

These warnings are well taken. Yet what is striking about the three books discussed above is how contemporary much of the historical data feels. In England, the Americas, and India, legal disputes centring on the drawing of ethnoreligious boundaries continue to make headlines. In all three areas, the history explored here resonates. We cannot understand the anxieties raised by the possible reintroduction of a hard border on the island of Ireland, for example, without grappling with the legal establishment of Protestantism in England, as Julian Rivers does in *The Law of Organized Religions*. Similarly, we cannot understand the structural racism built into the United States' criminal justice system without studying the racialization of slavery in the seventeenth century, as Katharine Gerbner's *Christian Slavery* clearly illustrates. And we cannot understand the violence facing contemporary Kashmiris without reference to the British colonizers' divide and rule approach to managing colonized peoples, the personal law element of which Mitra Sharafi's *Law and Identity* sheds such important light on.

Simplistic teleologies are, of course, to be avoided. Yet, glossing over the past is equally problematic. As scholars of law and religion, we must be attentive to the outcomes, both logical and otherwise, of centuries' worth of religious practice, legislation, and litigation. (To return to Ireland's recent wave of constitutional referenda, we need historians who can see beyond both *The New Yorker's* triumphalism and Atheist Ireland's ahistoricism.) Gerbner, Rivers, and Sharafi offer fine models for tomorrow's historians of law and religion to follow.

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